A Commercial Availability Policy is Needed for the National Organic Program

Comments by the Organic Materials Review Institute
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The Organic Materials Review Institute (OMRI) thanks the National Organic Program for including the requirement for use of organic ingredients when commercially available in the National Organic Program's Final Rule (§205.301(b)). OMRI supports the principle that ideally 100% of the agricultural ingredients in an organic product should be certified organic. However, international standards and prior existing US certification standards provide for an allowance for non-organic ingredients in cases where an ingredient of organic origin is unavailable in sufficient quality or quantity. This allowance should be subject to periodic review and re-evaluation. The OFPA clearly allows for 5% non-organic ingredients in a product labeled organic, but the requirement to use organic ingredients when available has been the industry standard since 1990 and has contributed to the increased availability of organic products and ingredients.

OMRI also supports the definition of commercial availability as proposed in the rule.

"The ability to obtain a production input in an appropriate form, quality, and quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan."

Requirement for Organic Seeds

This definition also applies to the requirement for organic seed (§205.204(a)). Seeds must be organic unless an equivalent organically produced variety is not commercially available. Certifiers have had considerable experience requiring documentation and verification of use of untreated seeds, and OMRI believes that the rule correctly assigns primary authority to certifiers to grant exemptions based on non-availability of organic seed. Certifiers will verify documentation through the farm plan requirements stated in 205.201(a)(2) and normal review and inspection process.

OMRI intends to assist certification agencies and producers by providing a registry service on our website that will provide easily accessible information about sources of organic seeds. In addition, OMRI has had a number of inquiries from organic seed producers about acceptable materials for use in seed production. OMRI believes that this requirement in the rule will help foster the development of the organic seed industry, help protect farmers from seed contamination with GMOs, and achieve harmonization with EU requirement for organic seed.

Determination of Commercial Availability of Organic Ingredients

OMRI supports the OTA comments regarding the suggested process for documentation of lack of commercial availability on the part of producers and verification steps needed

by certifiers. OMRI agrees with OTA also that this process will need some oversight through the accreditation process to maintain consistency between agencies in granting of such exemptions.

1. *What factors, such as quantity, quality, consistency of supply, and expense of different sources of an ingredient should be factored into the consideration of commercial availability?*

These factors are important in the determination commercial availability. However, expense will be a difficult factor to use fairly when evaluating availability. Many market forces will impact a producer's decision to use a given ingredient at a given price. If a limited supply of an ingredient makes it unaffordable in an organic product, the handler has the option of forgoing that ingredient and labeling the product as "Made with Organic specified ingredients." The handler may optionally still indicate the percentage of organic ingredients in the product. It should be noted that IFOAM recognizes only quality and quantity as justification for making a derogation to the requirement of 100% organic ingredients. Codex considers only quantity and states "where such ingredients of agricultural origin are not available, or in sufficient quantity".

2. *What relative importance should each of these factors possess, and are there circumstances under which the relative importance can change?*

Quality and quantity are both important. Consistency of supply could be evaluated in context of the needed quantity for a production run.

3. *What activities and documentation are sufficient to demonstrate that a handler has taken appropriate and adequate measures to ascertain whether an ingredient is commercially available?*

One possible solution is for the certifying body to make a determination based on information provided in the organic handling plan. This is in the Organic Certifiers Council policy:

A. The applicant must submit a written report to the certifying agent as part of the Organic Plan that lists:

1. Description and technical specifications of the input;
2. Known sources of the input, and organic status or lack thereof;
3. Written evidence of effort to locate sources of organic inputs, including letters and phone logs of discussions with potential suppliers. At least three suppliers must be contacted;
4. Estimate of the quantity of the inputs needed within a specified time, if this is a factor in the requested allowance of a non-organic input; and
5. Explanation of how input is used to fulfill an essential function, and that there are no acceptable alternatives that may be sourced organically.

B. The certifying agent must:

1. Verify that the applicant has made a good faith effort to source organic inputs and evaluate the claim that no organic substitutes are available;

2. Keep a list of inputs that have been granted allowances in non-organic forms, and specify for what time periods;
3. Make these allowances known to the National Organic Program at the time of the certifier's initial accreditation and every annual review thereafter;
4. Update these lists on a regular basis as inputs become available in organic form;
5. Investigate availability when new information or complaints are received;
6. Require applicants to update this information in each annual Organic Plan; and
7. Products without sufficient documentation may not be labeled as "organic" but may be labeled as "made with organic (specified ingredients or food groups)."

OMRI is investigating whether it should serve as a registry for items that certifiers have deemed are commercially unavailable.

4. *How can AMS ensure the greatest possible degree of consistency in the application of the commercial availability standard among multiple certifying agents?*

AMS could routinely review the exemptions granted as part of the accreditation process annual updates. Another approach would be to model such a program on the lines of the European Union under EU Regulation 2092/91 as amended by EU Regulation 2020/2000.

The procedure in the EU can be described as follows:

- A processor tries to locate a certain input
- If he is unable to do so, he turns to his "competent authority", i.e., the authority that needs to know he is an organic operator and files an application that he may use this particular input in conventional quality - the authority grants this exception for a certain amount, purpose and no more than three months - the authority then informs the other competent- they together with the Commission in Brussels have the right to check this and say "no" to a prolongation after the three months are over
- The EU authorities are obliged to inform others about the name, address etc. of the operator who requested the exception this information may someday be placed on the internet to make it more easily available for the market
- The competent authority who granted the exception may prolong this for up to a maximum of three times 7 months (i.e., a total of 24 months)
- After that this ingredient would go into Annex VIC of the EU-Regulation and could then be used in conventional quality without the application procedure

This system may not be completely appropriate for the US situation. Also, if the USDA is to develop a system that will comply with *Codex Alimentarius* and other established international standards, the decision to grant exemptions must be made independent of the handler and include all stakeholders in the process.